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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 ) IB Docket No. 96-261  
International Settlement Rates )

**COMMENTS OF SBC COMMUNICATIONS INC.**

SBC Communications Inc. ("SBC"), by its attorneys and on behalf of its subsidiaries, Southwestern Bell Communications Services, Inc. ("SBCS"), and Southwestern Bell Mobile Systems ("SBMS"), files these comments in response to the Public Notice, released December 19, 1996, establishing a comment cycle in connection with the *Notice of Proposed Rulemaking* issued in the above-captioned Docket (the "NPRM").

**I. INTRODUCTION**

The Commission's goals in the international telecommunications services market, described in the *Foreign Carrier Entry Order*<sup>1</sup> and restated in this *NPRM*, are laudable; the Commission seeks:

- A. to promote effective competition in the global markets for communications services;
- B. to prevent anticompetitive conduct in the provision of international telecommunications services or facilities; and

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<sup>1</sup>*Market Entry and Regulation of Foreign-Affiliate Entities, Report and Order*, IB Docket 95-22, 11 F.C.C.R. 3873 (1995) ("*Foreign Carrier Entry Order*").

C. to encourage foreign governments to open their communications markets.

However, while these goals are important, the Commission's proposal that they be attained by means of the imposition of more restrictive benchmarking measures on U.S. carriers, or by attempting to force these new measures on foreign carriers, is counterproductive. Placing such requirements on U.S. carriers has the potential to disrupt the encouraging downward trend in international settlement rates that has been brought about by competitive reform and technological developments. The Commission should, therefore, stay the course in international settlement rates.

## **II. DISCUSSION**

### **A. MARKET FORCES ARE ALREADY IMPACTING INTERNATIONAL SETTLEMENT RATES**

The Commission is correct in recognizing that "technological change, increased power of digital technology and greater reliance on market forces and competitive behavior have combined to reduce costs."<sup>2</sup> By the Commission's own calculation, the average settlement rate has dropped some 29% in the past four years (down from 51.5¢ in 1992 to 36.5¢ in 1996).<sup>3</sup> This represents a smooth, natural decline in settlement rates that benefits consumers without disrupting either U.S. carriers' objectives or foreign countries' or carriers' economic well-being.

However, the Commission's conclusion that the technological forces, market forces, and

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<sup>2</sup>NPRM at ¶ 27.

<sup>3</sup>NPRM at ¶ 26.

competitive behavior have “render[ed the] existing benchmark ranges obsolete”<sup>4</sup> is erroneous. Rather, the Commission should recognize that market-based incentives are taking hold in international telecommunications services markets and that the role, or value, of benchmarks is being diminished. Mandatory benchmarks should be relied upon only as a last resort, to be considered only when market forces are thwarted by foreign governmental or commercial intervention.

**B. FORBEARANCE MEASURES SUPPORT COMMISSION GOALS**

In November 1996, the Commission’s issued its *Fourth Report and Order* in CC Docket No. 90-337,<sup>5</sup> which added substantial pro-competitive provisions to its existing International Settlements Policy (“ISP”). In the *Flexibility Order*, the Commission determined that a “more flexible approach to our ISP will encourage the development of competitive market conditions in other countries and lead to more economically efficient contractual arrangements for terminating service that ultimately will benefit U.S. consumers through lower calling prices.”<sup>6</sup>

In the *NPRM*, the Commission asks whether it should “forbear from applying its benchmark rates where there is effective competition for international services on a route and where substantial progress has been made . . . .”<sup>7</sup> Forbearance would advance the pro-competitive elements of the Commission’s *Flexibility Order*. Forbearance in those instances where

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<sup>4</sup>*NPRM* at ¶ 27.

<sup>5</sup>*Regulation of International Accounting Rates*, CC Docket No. 90-337, *Phase II, Fourth Report and Order*, FCC 96-459 (rel. December 3, 1996) (“*Flexibility Order*”).

<sup>6</sup>*Flexibility Order* at ¶ 74.

<sup>7</sup>*NPRM* at ¶ 69.

competition exists in foreign markets will allow business negotiations to flourish, thereby benefiting U.S. consumers through efficient pricing of international services and benefiting the U.S. telecommunications industry by stimulating demand for international traffic. For those countries that are making "substantial progress" toward opening up their telecommunications markets to competition, forbearance provides the flexibility both U.S. and foreign parties need to negotiate terms that make economic sense to all participants.

C. COMMISSION SHOULD WORK TOWARD ITS GOALS THROUGH INTERNATIONAL FORA

International accounting rates--and, consequently, any proposed or enforceable benchmarks--represent multinational agreements among the world's governments and telecommunications providers. Any U.S.-based regulatory body's attempts to force accounting policies and terms upon other sovereign nations or their citizens is unlikely to be well-received.

As explained in the *NPRM*, international organizations such as the World Trade Organization ("WTO") and the International Telecommunication Union ("ITU") are already at work trying to open markets and to optimize the development of the international telecommunications services market. In the *NPRM*, the Commission acknowledges that the ITU has contributed to the progress in reducing settlement rates. The Commission reasonably proposes "to work with U.S. carriers and other U.S. government agencies to suggest measures the ITU could undertake to promote more rapid progress."<sup>8</sup> By working through such international fora, the U.S. can petition other governments to adopt its recommendations for

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<sup>8</sup>*NPRM* at ¶ 17.

reform. Policies adopted through these bodies will constitute agreements among countries, not the imposition of the economic will of a single nation. Furthermore, any agreements reached through these bodies will carry the influence of the world community, not simply the weight of one regulatory agency of one economic sector of one country.

**D. ENFORCEMENT PROPOSALS ARE LIKELY TO BE INEFFECTIVE--EVEN  
HARMFUL--TO RELATIONSHIPS BETWEEN U.S. CARRIERS AND  
FOREIGN CORRESPONDENTS**

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In the *NPRM*, the Commission proposes to identify any foreign carriers that are reluctant to engage in meaningful progress toward negotiating settlement rates at or below its planned benchmarks.<sup>9</sup> Once identified, the Commission outlines a number of steps it would undertake to reduce settlement rates with those carriers.

First, the Commission proposes to “convey to the responsible government authorities our concern about continued high settlement rates and the lack of meaningful progress, and to seek their support in lowering settlement rates.”<sup>10</sup> Foreign governments and carriers that have already displayed a lack of commitment to competitive reform are unlikely to be persuaded by the U.S. Commission’s contacts. However, complaints brought to a foreign government either by--or with the backing of--the ITU or another multilateral organization may be more effective.

The Commission also proposes another set of measures should foreign carriers resist efforts to achieve reductions in settlement rates. The Commission's measures would direct U.S. carriers to reach settlement agreements that meet benchmark levels, or failing that, would require

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<sup>9</sup>*NPRM* at ¶ 87.

<sup>10</sup>*NPRM* at ¶ 88.

certain terms and conditions in an attempt to force the negotiations toward benchmark levels. The Commission even proposes to direct the U.S. carriers to pay its foreign correspondent only the benchmark rate, regardless of the status of negotiations. This sort of government intervention leading to unilateral behavior would undoubtedly be disruptive to any orderly attempts to reduce settlement rates. By directing U.S. carriers to take certain actions--some which are likely to appear hostile from the foreign carriers' perspectives--the Commission would potentially undermine the ability of U.S. carriers to continue negotiations and to develop creative, potentially beneficial solutions to any international accounting disputes.


### **III. CONCLUSION**

The Commission's goals of encouraging foreign governments to open their communications markets to competitive services and discouraging anticompetitive conduct in the provision of international services are both important and achievable. However, the Commission must recognize that its goals cannot be reached simply by imposing more restrictive settlement rate benchmarks on U.S. carriers and attempting to force these rates on foreign carriers.

Instead, the Commission should broadly apply the forbearance measures suggested in the *NPRM*. This would allow U.S. carriers and those foreign carriers from countries that have opened their markets to competition, or are showing substantial progress toward such liberalization, to reach accounting rate agreements in an efficient, fair, and pro-competitive manner.

Respectfully submitted,

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